

No. 11749.

IN THE
United States Circuit Court of Appeals
FOR THE NINTH CIRCUIT

J. A. JOSE, OLGA JOSE, CORDA LANCASTER, WILLIAM LANCASTER, ELLA JACKMAN, JOHN I. JACKMAN, GEORGE T. RENAKER, JOHN S. PATTEN, HARRIS H. HAMMOND, A. L. BERGERE, J. C. BERGERE, WILLARD WALLACE, EDNA M. WALLACE, JAMES P. DELANEY, MARY J. DELANEY and IRVIN S. BARTHEL,

Appellants,

vs.

HATTIE M. HOUCK, as Administratrix of the Estate of Stanley B. Houck, Deceased, RUBY E. EDLING, WILNA M. SHEPARD, HATTIE M. HOUCK, RUTH M. HEBBERD, MINNIE N. McKENZIE, HOWARD H. McKENZIE, VERONICA K. GHOSTLEY and H. W. LEWIS,

Appellees.

Upon Appeals From the District Court of the United States
for the Southern District of California
Central Division

APPELLANTS' OPENING BRIEF.

MICHAEL F. SHANNON,

THOMAS A. WOOD,

1017 Citizens National Bank Building, Los Angeles 13,

*Attorneys for Appellants, J. A. Jose, Olga Jose,
Corda Lancaster, William Lancaster, Ella
Jackman, John I. Jackman, George T. Ren-
aker, John S. Patten.*

FILED



TOPICAL INDEX

	PAGE
Statement of the pleadings.....	1
Jurisdiction of the District Court.....	3
Jurisdiction of the Circuit Court of Appeals.....	3
Statement of fact.....	3
Specifications of errors.....	7
Specification of Error No. 1. The court erred in finding that the Houck group was, on the 7th day of September, 1945, the owners of and entitled to the possession of the lands and premises as set forth in finding V of the transcript, page 45	8
Specification of Error No. 2. The court erred in finding that the plaintiffs fully complied with Sections 2303 and 2304 of the Public Resources Code of the State of Cali- fornia and with Sections 35 and 36 of Title 30, U. S. C. A., transcript, page 45.....	14
Specification of Error No. 3. The court erred in finding that the plaintiffs performed the necessary discovery work upon each of said claims within the time permitted by law, tran- script, page 46.....	15
Specification of Error No. 4. The court erred in finding it to be true that the plaintiffs have expended many thousands of dollars to determine the worth and value of the clay in the development and growth of animal and vegetable life and in the elimination and prevention of pests of all kinds, transcript, page 46.....	15

Specification of Error No. 5. The court erred in finding it to be true that at all times mentioned in plaintiffs' complaint, the plaintiffs have at further cost and expense developed an extensive market for the use of said clay, and as a result of such expenditure and of the efforts so put forth by plaintiffs have established an extensive market and wide clientele through which and to whom said clay has been sold or otherwise distributed.....	17
Specification of Error No. 6. The court erred in finding that all of the denials of the answers of the defendants Jose et al., and all of the allegations and averments of said answers were untrue.....	17
Conclusion	18

TABLE OF AUTHORITIES CITED.

CASES	PAGE
Beals v. Cone, 27 Colo. 473, 62 Pac. 948.....	10
Belk v. Meagher, 104 U. S. 279, 26 L. Ed. 735.....	13
Cole v. Ralph, 252 U. S. 286, 64 L. Ed. 567.....	9
Creede and C. C. M. & M. Co. v. Uinta T. M. & T. Co., 196 U. S. 342, 49 L. Ed. 501.....	9, 10
Erhardt v. Board, 113 U. S. 527, 28 L. Ed. 1113.....	13
Lockhart v. Johnson, 181 U. S. 516, 45 L. Ed. 979.....	13
Tuolumne Consolidated Mining Co. v. Maier, 134 Cal. 583, 66 Pac. 863	10

STATUTES

Judicial Code, Sec. 24.....	3
Judicial Code, Sec. 128.....	3
Public Resources Code, Sec. 2303	7, 14
Public Resources Code, Sec. 2304	6, 7, 11, 12, 13, 14, 15, 17
Public Resources Code, Sec. 2305	6, 11, 12, 13, 14, 15, 17, 18
Public Resources Code, Sec. 2313	12
United States Code Annotated, Title 28, Sec. 41.....	3
United States Code Annotated, Title 28, Sec. 225.....	3
United States Code Annotated, Title 30, Sec. 23.....	9
United States Code Annotated, Title 30, Sec. 35.....	7, 9, 14
United States Code Annotated, Title 30, Sec. 36	7, 14
United States Code Annotated, Title 43, Sec. 416.....	4

TEXTBOOKS

1 Lindley on Mines, pp. 443, 444.....	10
2 Lindley on Mines, 3rd Ed., para. 336, p. 765.....	10

No. 11749.

IN THE

United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT

J. A. JOSE, OLGA JOSE, CORDA LANCASTER, WILLIAM LANCASTER, ELLA JACKMAN, JOHN I. JACKMAN, GEORGE T. RENAKER, JOHN S. PATTEN, HARRIS H. HAMMOND, A. L. BERGERE, J. C. BERGERE, WILLARD WALLACE, EDNA M. WALLACE, JAMES P. DELANEY, MARY J. DELANEY and IRVIN S. BARTHEL,

Appellants,

vs.

HATTIE M. HOUCK, as Administratrix of the Estate of Stanley B. Houck, Deceased, RUBY E. EDLING, WILNA M. SHEPARD, HATTIE M. HOUCK, RUTH M. HEBBERD, MINNIE N. McKENZIE, HOWARD H. McKENZIE, VERONICA K. GHOSTLEY and H. W. LEWIS,

Appellees.

APPELLANTS' OPENING BRIEF.

Statement of the Pleadings.

This is an action brought by the plaintiffs against the defendants to quiet title to sixteen placer mining claims of 160 acres each, the claims being located in Township 14 South, Range 12 East, San Bernardino Base and Meridian, Sections 20, 21, 28 and 29, Imperial County, California, the complaint alleging that ever since on or about the 6th day of September, 1945, the plaintiffs have been and now are the owners and entitled to the possession of the lands and premises involved. In addition to the usual allegations to quiet title, there were included in the

complaint allegations that the plaintiffs had conducted experiments with respect to the clay located on the land; that the defendants had entered the premises and taken possession thereof, having employed agents and servants to extract the clay from the premises in violation of the plaintiffs' rights; that the defendants had threatened the plaintiffs and their employees with bodily injury if the plaintiffs or their agents entered upon the premises; that the plaintiffs had requested the defendants to cease and desist from such threats and to cease and desist from representations to the customers and clients and prospective customers and clients of the plaintiffs, and that the defendants had failed and refused to do so; that the value of the property was in excess of the sum of \$3,000.00. [Tr. pp. 2-9.]

The defendants, J. A. Jose, Olga Jose, Corda Lancaster, William Lancaster, Ella Jackman, John I. Jackman, George T. Renaker and John S. Patten, answered [Tr. pp. 10-16 incl.], denying the allegations of the plaintiffs' complaint and alleging that said defendants were the owners of said land through valid locations thereof, and that the plaintiffs had no right, title or interest therein or thereto.

The defendants, Harris H. Hammond, A. L. Bergere, J. A. Bergere, Willard Wallace, Edna M. Wallace, James P. Delaney, Mary P. Delaney and Irving S. Barthel, answered and counterclaimed. These defendants denied the material allegations of plaintiffs' complaint and alleged that they were the owners of and entitled to the possession of the property involved, and by way of counterclaim asked that their title to the property be declared good and valid. [Tr. pp. 19-25 incl.]

Subsequently these same defendants filed a cross-complaint in which they sought to have their title quieted as

against the remaining defendants. [Tr. pp. 26-29 incl.] To this cross-complaint, the cross-defendants, J. A. Jose et al., answered denying the material allegations of the cross-complaint, and asked that the title of the cross-defendants in said land be declared good, valid and free of each and every claim of cross-complainants. [Tr. pp. 30-31.]

Jurisdiction of the District Court.

The jurisdiction of the District Court was invoked by reason of diversity of citizenship between the plaintiffs and defendants, and by the allegation that the matter in controversy, exclusive of interest and costs, was in excess of the sum of \$3,000.00.

Judicial Code, Section 24;

U. S. C. A., Title 28, Section 41.

Jurisdiction of the Circuit Court of Appeals.

The jurisdiction of the Circuit Court of Appeals is invoked pursuant to *Judicial Code*, Section 128, Title 28, *U. S. C. A.*, Section 225.

Statement of Fact.

For the purposes of this brief, the plaintiffs will be referred to herein as the Houck group, the defendants and cross-complainants as the Hammond group, and the defendants and cross-defendants as the Jose group.

During the year 1937, the Jose group located the land here involved as placer claims and were thereafter continuously in possession until the 7th day of September, 1945. The Jose group were without knowledge of the fact that the land involved had been withdrawn from entry, pursuant to an order of the Secretary of the In-

terior, dated October 19, 1920, under the first provision of Section 416, Title 43, *U. S. C. A.*, and was, therefore, not land upon which mineral locations could be made.

On July 6, 1945, an order was made by the Secretary of the Interior, opening the lands to entry as of ten A. M., September 7, 1945. [Tr. p. 239, Pltf. Ex. 47.] On September 7, 1945, the Houck group and the Hammond group were on the property at the hour fixed by the Secretary of the Interior for the opening of the lands, and each group started to post notices of location, staking the sixteen claims here in litigation. Both groups placed notices of location on all sixteen claims on the 7th day of September, 1945. No work other than the posting of the notices was done on this day.

H. W. Lewis, representing the Houck group, returned to the property sometime in October, examined the location notices and left. Thereafter he was on the property several times for the purpose of examining the location notices, and in either the last week in November or the first week in December of 1945, he commenced doing discovery work on the claims upon which the Houck group had placed notices of location on September 7, 1945. [Tr. pp. 133-135.] There was no testimony that there had been a discovery of mineral on any of the claims by any member of the Houck group or anyone acting on their behalf prior to the last week of November or the first week of December, 1945.

Commencing either in the last week of November or the first week in December, 1945, Lewis, representing the

Houck group, entered the premises and performed work on each of the claims upon which location notices were placed on September 7, 1945. Lewis testified that the minimum amount of work was done on each claim [Tr. p. 143]; that there was expended on each claim the sum of \$160.00.

Plaintiffs introduced in evidence a time book [Tr. p. 153, Plaintiffs' Exhibit 45]. Lewis testified that this time book contained a complete list of the men employed and a correct statement of the amount of money expended for the work performed on the claims. The time book shows the total amount of money spent for labor performed on the claims to be the sum of \$2085.90.

The Hammond group returned to the property for the purpose of doing discovery work on November 4, 1945, and between November 5th and November 11th, 1945, made discovery on each of the claims. [Tr. p. 326.] This work was supervised by the witness, William E. Wilson. [Tr. p. 328.] The work was done with a bulldozer and carry-all operated for five days. [Tr. p. 334.] Two men were employed. [Tr. p. 347.]

The Jose group, after the time for compliance with the state statutes had expired, entered in and upon the property and performed discovery and development work and made location pursuant to the federal and state statutes. [Tr. pp. 309, 320, 321, 390-398.]

No evidence was offered by the plaintiffs in support of the allegations of their complaint that they had expended any money or employed chemists or other scientists

to determine the value of the clay. No evidence was offered that the defendants or any of them had, in any manner or at all, interfered with the plaintiffs in the development of the property or had made representations to plaintiffs' customers or clients or to their prospective customers or clients. No evidence was offered that the defendants had, in any manner or at all, violated the rights of the plaintiffs other than by the performance of discovery and location in and upon the property, if the plaintiffs had any rights.

The questions involved on this appeal by the Jose group are:

1. Did the plaintiffs make valid locations in the manner and form prescribed by the mining laws of the United States and by the statutes of the State of California?
2. At the time that the plaintiffs claim to have done their discovery work, were the lands involved open to location?
3. Did the Hammond group, after making discovery, between the 5th and the 11th days of November, 1945, perform the amount of work required by Sections 2304 and 2305 of the *Public Resources Code* of the State of California?
4. Did the plaintiffs, during the last week of November or the first week of December, 1945, do the amount of work on the claims required by Sections 2304 and 2305 of the *Public Resources Code* of the State of California?

Specifications of Errors.

I.

The court erred in finding that the Houck group was, on the 7th day of September, 1945, the owners of and entitled to the possession of the lands and premises as set forth in finding V of the transcript, page 45.

II.

The court erred in finding that the plaintiffs fully complied with Sections 2303 and 2304 of the *Public Resources Code* of the State of California and with Sections 35 and 36 of Title 30, *U. S. C. A.* [Tr. p. 45.]

III.

The court erred in finding that the plaintiffs performed the necessary discovery work upon each of said claims within the time permitted by law. [Tr. p. 46.]

IV.

The court erred in finding it to be true that the plaintiffs have expended many thousands of dollars to determine the worth and value of the clay in the development and growth of animal and vegetable life and in the elimination and prevention of pests of all kinds. [Tr. p. 46.]

V.

The court erred in finding it to be true that at all times mentioned in plaintiffs' complaint, the plaintiffs have, at further cost and expense, developed an extensive market for the use of said clay, and as a result of such expenditure and of the efforts so put forth by the plaintiffs, have established an extensive market and wide clientele through which and to whom said clay has been sold or otherwise distributed. [Tr. p. 46.]

VI.

The court erred in finding that all of the denials of the Jose defendants' answers and all of the allegations and averments of said answers, adverse or inconsistent with the findings, are untrue. [Tr. p. 46.]

Specification of Error No. 1.

The Court Erred in Finding That the Houck Group Was, on the 7th Day of September, 1945, the Owners of and Entitled to the Possession of the Lands and Premises as Set Forth in Finding V of the Transcript, page 45.

The evidence offered by the plaintiffs with respect to the posting of notices of location was offered by the witness Harold W. Lewis. We make no point with respect to the posting of location notices by the Houck group and the Hammond group. We concede that both groups posted location notices on the 7th day of September, 1945, and that the notices as posted describe the claims properly upon which they were posted, and that duplicate copies of the notices were filed with the County Recorder of the County of Imperial, State of California.

The testimony of the plaintiffs with respect to discovery consisted of the testimony of the witness Lewis. Lewis testified that after September 7, 1945, he returned to the property in the middle of October for the purpose of examining the location notices; that he examined each notice and found it intact [Tr. p. 134]; that he returned to the property on various occasions from then on until the latter part of November; that in either the last week of November, 1945, or the first week of December, 1945, he commenced the discovery work on behalf of the Houck group. [Tr. p. 135.] No evidence other than this was offered by the plaintiffs with respect to discovery.

The Hammond group offered the witness Wilson with respect to discovery work. Wilson testified that he supervised the discovery work for the Hammond group, and that the work was done between the 5th and the 11th days of November, 1945, and that he discovered clay on each of the claims. [Tr. p. 326.] He testified that this

work consisted of the services of two men [Tr. p. 347], a bulldozer and a carry-all for a period of five days. [Tr. p. 334.] This presents the question of who first made discovery and what rights came into existence in favor of the group first making the discovery.

The rule of law is settled beyond controversy that discovery is the basic requisite to a valid location.

U. S. C. A., Title 30, Section 23.

Placer claims are subject to entry under like circumstances and conditions and upon similar proceedings as are provided for vein or lode claims.

U. S. C. A., Title 30, Section 35.

Location is the act or series of acts whereby the boundaries of a claim are marked, etc., but it confers no rights in the absence of discovery, both being essential to a valid claim.

Cole v. Ralph, 252 U. S. 286, 64 L. Ed. 567.

A location is not made by taking possession alone, but by working on the ground, recording and doing whatever else is required for that purpose by the Acts of Congress and the local laws and regulations.

Creede and C. C. M. & M. Co. v. Uinta T. M. & T. Co., 196 U. S. 342, 49 L. Ed. 501.

The order in which the several acts required by the law are to be performed is non-essential in the absence of intervening rights. The marking of the boundaries may precede the discovery or the discovery may precede the marking, but if both are completed before the rights of another intervene, the earlier act will inure to the benefit of the locator; if the boundaries are marked before dis-

covery, the location will date from the time discovery is made.

Creede and C. C. M. & M. Co. v. Uinta T. M. & T. Co., 196 U. S. 342, 49 L. Ed. 501.

Priority of discovery gives priority of right against naked location and possession without discovery.

2 *Lindley on Mines*, 3rd Edition, para. 336, page 765.

Where location is made without discovery, the land remains public domain until there be a discovery.

Tuolumne Consolidated Mining Co. v. Maier, 134 Cal. 583, 66 Pac. 863.

Where a location and record were made with no discovery, a subsequent discovery will not relate back and cut out an intervening location with discovery.

Beals v. Cone, 27 Colo. 473, 62 Pac. 948.

The discovery of mineral, not the posting or the filing of the certificate of location, nor the date recited therein, is the inauguration of a locator's rights.

Creede and C. C. M. & M. Co. v. Uinta T. M. & T. Co., 196 U. S. 342, 49 L. Ed. 501;

1 *Lindley on Mines*, pages 443, 444.

The record here discloses without contradiction that the Houck group neither made nor attempted to make a discovery on the property until the latter part of November or the first part of December, 1945; that the Hammond group made a discovery on all of the claims between November 5th and November 11th, 1945. Under the authorities cited above, this discovery made the Hammond

group's location of the sixteen claims effective as of the dates between November 5th and November 11th, 1945. Under the United States statutes, this discovery was sufficient to make a valid location and to take the claims out of the public domain. The United States statutes do not require additional work, simply the discovery and the posting of the location notices. The statutes of the State of California, however, do require additional work before there can be a valid location. With reference to a placer mining claim, Sections 2304 and 2305 of the *Public Resources Code* provide:

Section 2304:

“Improvement of claims: Excavation of shaft, tunnel or open cut. (a) (Discovery shaft, tunnel, adit or open cut.) Within ninety days after the date of location of any lode mining or placer claim hereafter located, the locator or locators thereof shall sink a discovery shaft upon the claim to a depth of at least ten feet from the lowest part of the rim of the shaft at the surface, or shall drive a tunnel, adit, or open cut upon the claim to at least ten feet below the surface.

(b) (Open cut on placer claim.) In lieu of the discovery work required by paragraph (a) of this section, the locator of a placer mining claim may, within ninety days of the date of location, excavate an open cut upon the claim, removing from the cut not less than seven cubic yards of material. (Enacted 1939; Amended by later act passed at same session, Stats. 1939, ch. 1104, pp. 1, p. 3037.)”

Section 2305:

“Same: Additional work on certain placer claims: Nature and extent of work: Construction of section. Within ninety days after the date of location of any placer mining claim hereafter located containing more than twenty acres, the locator or locators thereof shall perform at least one dollar’s worth of work for each acre included in the claim. This work may all be done at one place on the claim if so desired, and shall be actual mining development work exclusive of cabins, buildings, or other surface structures. Nothing in this section shall be construed as a modification of the requirements of section 2304 of this code. (Enacted 1939.)”

And Section 2313 provides for the recording of a copy of the notice of location, together with a statement of the markings of the boundaries and of the performance of the required discovery work, in the office of the County Recorder of the county in which such claim is situated.

Under Section 2305 of the *Public Resources Code*, after making discovery, the Hammond group were given ninety days in which to perform at least one dollar’s worth of work for each acre included in the claim, and to perform the work required by Section 2304. During this period of ninety days, the land was not in the public domain and not subject to location by either the Houck group or the Jose group, and if the Hammond group complied with Section 2304 and Section 2305 of the *Public Resources Code* of the State of California, they have and have had

since November 5th to 11th, 1945, the right to the possession of the mining claims involved as the valid locators thereof. During the period of ninety days allowed by the state statutes to complete the discovery and location work, the lands were not open to location by any other person. During this period, no valid rights could be initiated for the reason that the law did not allow it.

Lockhart v. Johnson, 181 U. S. 516, 45 L. Ed. 979;
Erhardt v. Board, 113 U. S. 527, 28 L. Ed. 1113.
Belk v. Meagher, 104 U. S. 279, 287, 26 L. Ed.
735.

Upon the failure of the Hammond group to do the work required by Sections 2304 and 2305 within the ninety days' period, the land again became open to entry. The question of whether or not they did this work was not found by the trial court. The evidence offered as compliance with these two sections of the *Public Resources Code* consisted of the testimony of the witness Wilson that he supervised the work [Tr. p. 328]; that the work was done with a bulldozer and a carry-all operated for five days [Tr. p. 334]; and that two men were employed. [Tr. p. 347.]

The finding by the court that the Houck group was, on the 7th day of September, 1945, the owners of and entitled to the possession of those certain lands and premises as set forth in finding V, transcript of record, page 45, is not only not supported by the evidence, it is contrary to the established rules of law as shown by the cases cited above.

Specification of Error No. 2.

The Court Erred in Finding That the Plaintiffs Fully Complied With Sections 2303 and 2304 of the Public Resources Code of the State of California and With Sections 35 and 36 of Title 30, U. S. C. A., Transcript, page 45.

As pointed out under Specification of Error No. 1, the lands here involved were not open to entry and location during the last week of November and the first week of December, 1945, so that the finding that the plaintiffs complied with Sections 2303 and 2304 of the *Public Resources Code* of the State of California and Sections 35 and 36 of Title 30, U. S. C. A., is not supported by the evidence; it is contrary to the evidence, and such finding, both under the facts and the law, is erroneous. In addition to this, the evidence shows that the plaintiffs did not perform the work required by Sections 2304 and 2305 of the *Public Resources Code*. The plaintiffs introduced in evidence a time book [Tr. p. 153, Pltf. Ex. 45], showing the total amount of money spent for labor performed on the claims to be the sum of \$2085.90. There was a total of 2560 acres involved. There was no evidence offered to show what particular sum was spent on any individual claim. The *Public Resources Code*, Section 2305, requires that at least one dollar's worth of work be done for each acre contained in the claim, and that the requirements of Section 2304 be complied with. Lewis, testifying on behalf of the plaintiffs [Tr. p. 143], testified that the minimum amount of money was spent on each claim, that is the sum of \$160.00. The record does not support this. \$160.00 was not the minimum amount of work required. It was required that in addition to at least one dollar's worth of work for each acre contained in the claim, the work required by Section 2304 of the *Public*

Resources Code be done. And on a placer claim located pursuant to Section 2305 of the *Public Resources Code*, it was necessary that a discovery shaft be sunk to a depth of at least ten feet from the lowest part of the rim of the shaft at the surface or a tunnel, adit or open cut be driven on the claim to at least ten feet below the surface. This was not done.

Specification of Error No. 3.

The Court Erred in Finding That the Plaintiffs Performed the Necessary Discovery Work Upon Each of Said Claims Within the Time Permitted by Law, Transcript, page 46.

The points made under Specifications of Error Nos. 1 and 2 cover the error of Specification No. 3. That is to say, the land was not open to entry when the plaintiffs did their discovery work. The plaintiffs did not do the amount of work required by Sections 2304 and 2305 of the *Public Resources Code* of the State of California.

Specification of Error No. 4.

The Court Erred in Finding It to Be True That the Plaintiffs Have Expended Many Thousands of Dollars to Determine the Worth and Value of the Clay in the Development and Growth of Animal and Vegetable Life and in the Elimination and Prevention of Pests of All Kinds, Transcript, page 46.

The only evidence with respect to whether or not anything had been done with respect to this clay is found in the testimony of the witness Lewis, and it is as follows:

“The Court: At what depth does this clay that you speak of being so valuable usually is found?”

The Witness: Some places, Judge, it is that far under the ground and some places it is quite a few feet under the ground.

The Court: Is that something like the stuff they use for building?

The Witness: No, no. This is altogether different. I have a piece of it in my pocket.

The Court: And the over-burden varies from place to place?

The Witness: Yes. That is a piece of it.

The Court: What is it used for?

The Witness: It is used as a food supplement for cattle.

The Court: In what form? Do you grind it?

The Witness: It is ground and they use a small percentage with the grain feed.

The Court: Does it have nutritional qualities? I know horses sometimes take a mouthful of dirt. I didn't know they found it generally.

The Witness: From what the biochemists say, I do not think this develops any nutritional qualities. I think what it does is re-establish in the animal the minerals that are needed for assimilation.

The Court: To establish a balance?

The Witness: Yes. Like the irons and calciums, etc." [Tr. pp. 137, 138.]

That was all of the testimony that was offered to support the finding.

Specification of Error No. 5.

The Court Erred in Finding It to Be True That at All Times Mentioned in Plaintiffs' Complaint, the Plaintiffs Have at Further Cost and Expense Developed an Extensive Market for the Use of Said Clay, and as a Result of Such Expenditure and of the Efforts so Put Forth by Plaintiffs Have Established an Extensive Market and Wide Clientele Through Which and to Whom Said Clay Has Been Sold or Otherwise Distributed.

There was not one word of testimony offered with respect to the facts set forth in the foregoing finding.

Specification of Error No. 6.

The Court Erred in Finding That All of the Denials of the Answers of the Defendants Jose et al., and All of the Allegations and Averments of Said Answers Were Untrue.

The defendants Jose, *et al.*, offered in evidence their notices of location, properly recorded, showing that on each claim they had performed not only \$160.00 worth of work, but that in addition thereto they had sunk a shaft to a depth of at least ten feet below the lowest part of the rim at the surface, and had removed over and above the \$160.00 requirements not less than sixty cubic yards from each claim [Tr. pp. 310-312; Deft. Ex. U, Tr. p. 319]; that they had spent in addition to the \$2560.00 necessary to cover the requirements of Section 2305 of the *Public Resources Code*, the sum of \$1367.00 covering the requirements of Section 2304 of the *Public Resources Code* [Tr. pp. 307-323]. The Jose defendants also offered in evidence the testimony of Joseph F. Golden, a registered civil engineer, his testimony commencing on

page 371 and going through to page 390, showing that the proper work was done on each location, the size of each hole dug, and the number of cubic yards removed. The Jose defendants offered the testimony of Charles H. Bratton commencing at page 390 to page 398, showing that Bratton had performed the work on each claim, and the value of the work done; that all of this work was performed in February and March of 1946, after the ninety days had expired in which the Hammond group had the right under Section 2305 of the *Public Resources Code* to complete their location.

Conclusion.

It is respectfully submitted that in the respects above assigned, the trial court committed error, that the findings of fact, conclusions of law and judgment are contrary to the facts and to the law, and that the judgment should be set aside and reversed.

MICHAEL F. SHANNON,

THOMAS A. WOOD,

Attorneys for Appellants, J. A. Jose, Olga Jose, Corda Lancaster, William Lancaster, Ella Jackman, John I. Jackman, George T. Renaker, John S. Patten.